

Tolley[®] Exam Training

ATT PAPER 5

IHT, TRUSTS AND ESTATES

LAW AND ETHICS QUESTIONS

5th Edition text books

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ATT**

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LAW AND ETHICS

The ATT Paper 5 syllabus includes Law and Ethics and these topics can be tested either as part of a long question or as a short form question.

The required depth of knowledge is “Principles”, i.e. you will be expected to have an awareness that a principle exists and its main thrust.

In this Question Bank we have provided some short questions for Law and Ethics for you to attempt as part of your preparation for your examinations.

Law:

The chapters from the ATT/CIOT Law text book “Essential Law for Tax Practitioners” (5th edition) that are included in the Paper 5 syllabus are:

- Chapter 7 Criminal Law and Tort
- Chapter 8 The Law of Property
- Chapter 15 The Law of Gifts and Succession Law
- Chapter 16 Trust Law
- Chapter 17 Establishing and Managing a Trust

Ethics:

The chapters from the ATT/CIOT Ethics text book “Professional Responsibilities and Ethics for Tax Practitioners” (5th edition) that are included in the Paper 1-6 syllabuses are:

PRPG (2018)

- Chapter 4 New clients and engagement letters
- Chapter 5 Client service
- Chapter 6 Objectivity (including conflicts of interest)
- Chapter 7 Other client handling issues
- Chapter 8 Charging for services
- Chapter 9 Complaints
- Chapter 10 Ceasing to act

PCRT (2019)

- Chapter 19 The fundamental principles
- Chapter 20 The standards for tax planning
- Chapter 21 Help sheet A: Submission of tax information and 'tax filings'
- Chapter 22 Help sheet B: Tax advice
- Chapter 23 Help sheet C: Dealing with errors
- Chapter 24 Help sheet D: Request for data by HMRC
- Chapter 25 Help sheet E: Members' personal tax affairs

LAW QUESTIONS

1. In order to create an enforceable express private trust, the 'three certainties' have to be present.

What are the three certainties?

2. There can be non-tax reasons and advantages in setting up a trust.

Identify three reasons.

3. When a person dies a personal representative is responsible for administering their estate.

Explain the difference between an Executor and an Administrator.

4. The Wills Act 1837 details requirements that a will must meet in order to be valid.

State the requirements.

5. **You are required to:**

- 1) **State how long copyright exists in a literary work.**
- 2) **State the criteria in order to register a patent for an invention.**

6. The trustees of a charity are considering the following investments:

- 1) A £1 lottery ticket for a rollover draw of £25 million.
- 2) £5,000 of premium bonds.
- 3) Shares in a quoted property group.
- 4) Government Gilt Edged Securities.

Which of the above would be appropriate investments for the charity trustees to purchase?

7. **1) What is meant by a breach of trust?**
- 2) What are the two remedies available to beneficiaries to recover any losses suffered when trustees are in breach of trust?**

8. There are a variety of criminal offences that a tax adviser and/or their client could be found guilty of.

Name three offences.

9. A trust may be established 'inter vivos'.

Define this expression and give an alternative situation when a trust may be established.

10. A gift to a beneficiary under a Will is called a legacy.

Explain two different types of legacy, giving a suitable example of each type.

LAW ANSWERS

The references in brackets at the end of the answers are to the 5th edition of the ATT text book "Essential Law for Tax Practitioners".

1. Certainty of intention (i.e. there must be a clear indication that the settlor intends to create a trust);

Certainty of subject matter (i.e. the property that is the subject of the trust must be identified precisely);

Certainty of objects (i.e. the beneficiaries of the trust must be clearly identifiable).

[Chapter 17.3]

2. Any *three*, for example:

- An owner might wish to retain control of the property
- An owner might want to conceal their ownership of property
- Trusts are often set up for charitable purposes

[Chapter 16.4]

3. An Executor is appointed under the deceased's Will to carry out the terms of the Will.

An Administrator is appointed by the Court because the deceased dies without making a Will, or the Will does not appoint an executor, for example.

[Chapter 15.4]

4. A Will must:

- be in writing
- signed by the testator, with the signature of the testator witnessed by two persons, present at the time
- be made while the testator has capacity; and
- must be made to operate as a Will

[Chapter 15.5]

- 5.

- 1) Copyright exists for 70 years from the end of the calendar year in which the author dies
- 2) A patent must be functional, new and have industrial use

[Chapter 8.6]

- 6.
- 1) Gambling, therefore inappropriate.
 - 2) No guaranteed income yield, therefore inappropriate.
 - 3) Appropriate.
 - 4) Appropriate.

[Chapter 17.7]

- 7.
- 1) A breach of trust arises where the trustees fail to carry out their duties in accordance with the terms of the trust instrument, or the law, or because they exercise their powers improperly.

For example, where they pay trust money to the wrong person, or profit from their trusteeship without authority.

- 2) There are two remedies to beneficiaries to recover losses suffered.
 - i They can recover trust property that still exists and is identifiable in the hands of the trustees or other persons who have received it. Property cannot be recovered from a bona fide purchaser for value who does not have notice that it was received in breach of trust.
 - ii They can claim damages from the trustees who can be personally liable for any loss not recovered through the action in 1. above.

[Chapter 17.10]

8. Any *three*, for example:

- 1) Theft under the Theft Act 1968
- 2) Fraud under the Fraud Act 2006
- 3) Offences in relation to Data Protection under DPA 2018 and GDPR

[Chapter 7.3]

9. A trust may be established by a settlor in his lifetime.

An alternative to this would be for a trust to be created by a Will (a Will trust).

[Chapter 15.1 & 16.2]

10. A specific legacy is a gift of a specific part of the deceased's estate that must be distinguishable from the rest of the estate. Examples: 'my gold ring' or 'my 500 shares in ABC plc'

A general legacy is a gift which does not refer to the specific property of the testator. Example: 'a horse for Mary' (whether or not the testator owns a horse).

A pecuniary legacy is a gift of money. Example – '£500 to my sister Jane'.

A demonstrative legacy is a gift of money payable out of a specific part of the testator's estate. Example: '£700 to James payable out of my XYZ Bank current account'.

A residuary legacy is normally left to named beneficiaries, who take their share after all other legacies have been satisfied. Example: 'the remainder of my estate to my daughter'.

[Any two required]

[Chapter 15.5]

ETHICS QUESTIONS

1. A member must be courteous and considerate to all with whom they come into contact in the course of their professional work.

Courtesy falls within which of the five 'Fundamental Principles' relating to members?

2. The 'Standards for Tax Planning' are critical to any planning undertaken by members.

What are the five Standards and provide a brief explanation of them.

3. You have taken on a new client and wish to agree a contingent fee as the basis of payment for the work required.

State three of the guidelines in relation to using contingent fees.

4. A director of a company to which you provide tax advice has asked if you would like to invest in the company.

Outline the guidance given to members on financial involvement with a client.

5. **When should engagement letters for tax clients be reviewed?**

6. You receive a call from the bank manager of a client. He requests a copy of the client's latest income tax return in order to support an application for a loan.

According to the Professional Rules and Practice Guidelines, which of the five 'Fundamental Principles' is threatened in this situation?

7. The Professional Rules and Practice Guidelines list four examples of ways in which a member can charge for services.

List the four methods.

8. **Where a member of the ATT is to pay a commission to a third party for introducing a client, what disclosure must the member make to the client?**

9. **State four matters that you would expect to be dealt with in the covering letter accompanying a typical contract for the provision of tax services.**

10. **What are the three choices available to a member who is asked to act for both parties to a transaction?**

11. You are a tax technician working on a personal tax return for a client. Looking back to last year's return you think you have discovered an error. You are unsure of how to deal with this.

What steps should you take, according to the flowchart on 'Dealing with Errors'?

12. The profits of a trade, profession or vocation must be computed in accordance with Generally Accepted Accounting Principles (GAAP) subject to any adjustment required or authorised by law in computing profits for those purposes. This permits a trade, profession, vocation or property business to disregard non-material adjustments in computing its accounting profits.

How does the accounting concept of materiality apply when making adjustments required to accounting figures so as to arrive at taxable profits?

13. A member dealing with third parties on a client's behalf must be careful not to inadvertently assume a duty of care towards the third party.

State four ways in which the member may manage these risks.

14. A member may sign a tax return in their capacity as a liquidator.

Name three other ways in which they can sign a return.

15. The Professional Rules and Practice Guidelines state that a member should request the prospective client's permission to communicate with the client's existing adviser before accepting a new appointment.

Explain why a member should communicate with an existing adviser.

16. **Describe briefly four principles set out in the Professional Rules and Practice Guidelines that govern a member accepting a new client.**

17. **According to the Association of Taxation Technician's Professional Rules and Practice Guidelines, what procedures should be put in place to handle complaints from clients?**

18. P Ltd is engaging Dov, a member of ATT, to assist with tax compliance work. The company is offering to pay a monthly fee in return for which its finance department is likely to want between two and five days of work from Dov per month.

Identify the major areas of concern when accepting a client on a retainer arrangement.

19. You discover that due to an error by HM Revenue & Customs you have received an excessive repayment of tax, on behalf of a client.

Briefly state what action you should take.

20. **When a member delegates work to a junior, or subcontracts it, who takes responsibility for this work, according to the Professional Rules and Practice Guidelines?**

ETHICS ANSWERS

The references in brackets at the end of the answers are to the 5th edition of the text book "Professional Responsibilities & Ethics for Tax Practitioners".

You are allowed to take into the exam the Yellow 2b Tolley Handbook, which contains the PCRT from the above text book. The page numbers in brackets refer to the page in the 2019/20 version where you will find these. You can highlight these in advance of going into the exam.

1. Professional behaviour.

[Chapter 19 section 19.6 para 2.22]
[Page 2,085 of Yellow 2b]

2. The five standards are:

- Client Specific – it must be specific to the particular client's facts and circumstances
- Lawful – Members must act lawfully and with integrity at all times and expect the same from their clients
- Disclosure and transparency – All relevant facts must be disclosed to HMRC
- Tax planning arrangements – Members must not promote tax planning that is set out to achieve results contrary to the intention of Parliament
- Professional judgement and appropriate documentation – members must exercise professional judgement on a number of matters and keep timely notes

[Chapter 22 section 22.2 point 1]
[Page 2,087 of Yellow 2b]

3. Any *three* from Chapter 8, section 8.2, for example:

- Contingent fees can carry increased risks, such as a third party questioning the independence and objectivity of the member. Accordingly, where a contingent fee basis is adopted, a member should take care not only to ensure that their conduct meets, but is seen to meet, the required principles of integrity and objectivity.
- A member should be aware that there may be legal or regulatory restrictions to having a contingent fee.
- It is advisable that where contingent fees are used the engagement letter should set out the scope of the work they cover and stipulate the action to be taken should subsequent events cancel all or part of the benefits to the client of the contingent fee arrangement. It should set out clearly and precisely whether part or the entire fee is to be repaid and whether interest is payable.

4. Having a financial involvement with a client may be perceived as impairing a member's ability to act objectively. Members should exercise care before entering into any kind of financial arrangement with a client. This includes, for example, lending money or investing in the business of a client.

[Chapter 6 section 6.5 para 6.5.1]

5. Engagement letters should be reviewed:

- annually; and
- when the scope of services changes significantly.

[Chapter 4 section 4.10 points 1 and 3]

6. Confidentiality

[Chapter 19 section 19.5 para 2.16]
[Page 2,085 of Yellow 2b]

7. Time and expenses

- Fixed fees
- Contingent (including success) fees
- Insurance

[Chapter 8 section 8.1 para 8.1.2]

8. If an ATT member is to pay a commission, they must disclose to the client:

- the amount and nature of the fee, commission or other reward; and
- the identity of the third party recipient.

[Other valid points will gain credit]

[Chapter 4 section 4.2 para 4.2.1]

9. Any *four* from Chapter 4 section 4.11, for example:

- (i) Who we are acting for;
- (ii) Period of engagement;
- (iii) Scope of services;
- (iv) AEOI, including FATCA

10. The three choices are:

- To advise both parties of the conflict and to give both the opportunity to consider if they wish to seek alternative representation, or agree that you continue to act for both, if appropriate
- To act for one client only – normally the one who first sought advice
- To act for neither party – if the conflict cannot be managed

[Chapter 6 section 6.4 para 6.4.2]

11. You should:
1. Establish the facts – is there an error?
 2. If there is an error – is it trivial?
 3. If it is not trivial – is specific authorisation required from the client to disclose the error to HMRC?
 4. If specific authorisation is required and the client is unwilling to give authorisation, and this is confirmed in writing, you must write to the client explaining the consequences of non-disclosure
 5. Depending on what happens at stage 4, you might be required to cease to act, and notify HMRC and your MLRO. (*Other valid points will get credit.*)

[Chapter 23 section 23.2 - flowchart]
[Page 2,099 onwards of Yellow 2b]

12. The application of GAAP does not extend beyond the accounting profits. Thus, the accounting concept of materiality cannot be applied when completing tax filings, for example, when computing adjustments required to accounting figures so as to arrive at taxable profits.

[Chapter 21 section 21.6 points 16-17]
[Page 2,090 of Yellow 2b]

13. Any *four* from Chapter 7 section 7.2 para 7.2.5, for example:
- Including a clear notice or caveat in the information stating that the advice has been prepared for the client and that no liability is accepted to any third parties who choose to make use of the information
 - Before consenting to the release of documents the member may request that the third party and its agents or advisers undertake that the member will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.
 - Requiring the third party and/or its advisers to undertake in writing that a member be excluded from liability or held harmless as a consequence of making the information available to them.
 - Communicating to the third party the terms upon which the information is released including limitations on scope, stating that the advice was prepared only with the client's interests mind, may not apply in all circumstances, and confirmation that no responsibility is accepted.

14. Any *three* from:

- receiver
- administrator
- trustee
- executor
- attorney
- director

[Chapter 21 section 21.11 point 33]

[Page 2,091 of Yellow 2b]

15.

- a) The member is aware of any professional reason why they should not accept the appointment.
- b) The client's affairs are properly dealt with, on a timely basis, and that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed in the transitional period.

[Chapter 4 section 4.4 paras 4.4.1-4.4.2]

16. Any *four* from Chapter 4 section 4.3 para 4.3.1, for example:

- Comply with the identification requirements set out in the anti-money laundering guidance
- Consider whether the potential client will be an acceptable client in terms of the risks which will arise for the practice from acting for that client and whether the member has the capability to manage those risks
- Consider whether the member and firm will have the skills and competence to service the client's requirements during the course of the engagement
- Consider whether there is any conflict of interest in accepting the client and if so whether and how it might be managed

17. The ATT's rules state that the procedures should ensure that:

- Each new client is informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided and of the ability to complain to the Taxation Disciplinary Board (TDB). This information should be included in the engagement letter.
- Each complaint is acknowledged promptly in writing.
- Each complaint is investigated thoroughly and without delay by a person of sufficient experience, seniority and competence who preferably was not directly involved in the act or omission giving rise to the complaint and the client is told about investigation.
- If the investigation finds that the complaint is justified, wholly or in part, any appropriate action is taken.

[Chapter 9 section 9.1 para 9.1.1]

18. One area of concern is what is covered by the arrangement. Therefore, the member should normally set out the retainer arrangement in writing so that the member and the client clearly understand the extent and limitations of the agreement and the point when further charges may be levied.

The other area for concern is that a member should watch out for conflicts of interest, given that under a retainer, the client can call on that member's services at any time, which may mean that the member may not be able to fulfil their obligations to other clients.

[Chapter 8 section 8.4 paras 8.4.2-8.4.3]

19. You should return it to HMRC as soon as practicable.

You do not need your client's authority to return an excessive repayment but should notify your client that you have done so.

[Chapter 23 section 23.5 point 21]
[Page 2,099 of Yellow 2b]

20. If a member delegates work, the member remains primarily responsible for the work so should exercise sufficient supervision to confirm that the work performed is satisfactory and that it is carried out by persons who have been suitably trained to carry out the work involved.

[Chapter 5 section 5.4 para 5.4.1]

